

JS 44 (Rev. 12/07, NJ 5/08)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

DANIELLE DRAPER

(b) County of Residence of First Listed Plaintiff _____

(c) Attorney's (Firm Name, Address, Telephone Number and Email Address)

Craig Thor Kimmel, Esquire
 Kimmel & Silverman, P.C.
 30 E. Butler Pike
 Ambler, PA 19002
 (215) 540-8888

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)

Citizen of This State	PTF	DEF	Incorporated or Principal Place of Business In This State	PTF	DEF
<input type="checkbox"/> 1	<input type="checkbox"/>	<input type="checkbox"/> 1	<input type="checkbox"/>	<input type="checkbox"/> 4	<input type="checkbox"/> 4
<input type="checkbox"/> 2	<input type="checkbox"/>	<input type="checkbox"/> 2	<input type="checkbox"/>	<input type="checkbox"/> 5	<input type="checkbox"/> 5
<input type="checkbox"/> 3	<input type="checkbox"/>	<input type="checkbox"/> 3	<input type="checkbox"/>	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
			LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
				FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
				<input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN	(Place an "X" in One Box Only)	Appeal to District Judge from Magistrate Judgment
<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court

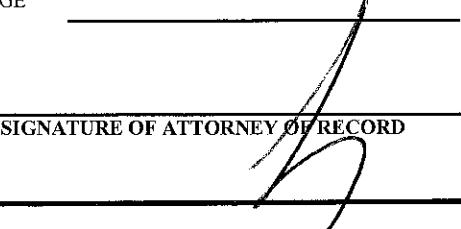
4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7

VI. CAUSE OF ACTION	Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 15 U.S.C SECTION 1692
	Brief description of cause: Fair Debt Collection Practices Act

VII. REQUESTED IN COMPLAINT:	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	DEMAND \$	CHECK YES only if demanded in complaint: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
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VIII. RELATED CASE(S)	(See instructions): JUDGE	DOCKET NUMBER
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Explanation: _____

DATE	SIGNATURE OF ATTORNEY OF RECORD
03/08/2013	

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

DANIELLE DRAPER	:	CIVIL ACTION
	:	
v.	:	NO.
TATE & KIRLIN ASSOCIATES, INC.	:	
	:	

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. (X)
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ()

<u>03/08/2013</u> Date	<u>Craig Thor Kimmel</u> Attorney-at-law	<u>Plaintiff, Danielle Draper</u> Attorney for
<u>215-540-8888</u> Telephone	<u>877-788-2864</u> FAX Number	<u>kimmel@creditlaw.com</u> E-Mail Address

FOR THE EASTERN DISTRICT OF PENNSYLVANIA -- DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 2400 24th Rd., South #416, Arlington, VA 22206

Address of Defendant: 2810 Southampton Rd., Philadelphia, PA 19154

Place of Accident, Incident or Transaction:

(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes No

Does this case involve multidistrict litigation possibilities?

Yes No

RELATED CASE, IF ANY:

Case Number: _____ Judge: _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?

Yes No

2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?

Yes No

3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?

Yes No

4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?

Yes No

CIVIL: (Place ✓ in ONE CATEGORY ONLY)

A. *Federal Question Cases:*

1. Indemnity Contract, Marine Contract, and All Other Contracts

2. FELA

3. Jones Act-Personal Injury

4. Antitrust

5. Patent

6. Labor-Management Relations

7. Civil Rights

8. Habeas Corpus

9. Securities Act(s) Cases

10. Social Security Review Cases

11. All other Federal Question Cases

(Please specify) 15 U.S.C. § 1692

B. *Diversity Jurisdiction Cases:*

1. Insurance Contract and Other Contracts

2. Airplane Personal Injury

3. Assault, Defamation

4. Marine Personal Injury

5. Motor Vehicle Personal Injury

6. Other Personal Injury (Please specify)

7. Products Liability

8. Products Liability — Asbestos

9. All other Diversity Cases

(Please specify) _____

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, Craig Thor Kimmel, counsel of record do hereby certify:

Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

Relief other than monetary damages is sought.

DATE: 03/08/2013

Attorney-at-Law

57100

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 03/08/2013

Attorney-at-Law

57100

Attorney I.D.#

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DANIELLE DRAPER,
Plaintiff
v.
TATE & KIRLIN ASSOCIATES, INC.,
Defendant
)

)
)
)
)
Case No.:
)
)
COMPLAINT AND DEMAND FOR
JURY TRIAL
)
)
(Unlawful Debt Collection Practices)
)

DANIELLE DRAPER (“Plaintiff”), by and through her attorneys, KIMMEL & SILVERMAN, P.C., alleges the following against TATE & KIRLIN ASSOCIATES, INC. (“Defendant”):

INTRODUCTION

1. Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* ("FDCPA") and the Telephone Consumer Protection Act, 47 U.S.C. §227 *et seq.* ("TCPA").

JURISDICTION AND VENUE

2. Jurisdiction of this court arises pursuant to 15 U.S.C. §1692k(d), which states that such actions may be brought and heard before “any appropriate United States district court without regard to the amount in controversy,” and 28 U.S.C. §1331 grants this court original jurisdiction of all civil actions arising under the laws of the United States.

3. Defendant conducts business in the Commonwealth of Pennsylvania, and as such, personal jurisdiction is established.

4. Venue is proper pursuant to 28 U.S.C. §1391(b)(1).

PARTIES

5. Plaintiff is a natural person and adult individual residing in Arlington, Virginia.

6. Plaintiff is a "consumer" as that term is defined by 15 U.S.C. §1692a(3).

7. Defendant is a national debt collection company with its corporate headquarters at 2810 Southampton Road, Philadelphia, Pennsylvania 19154.

8. Defendant is a “debt collector” as that term is defined by 15 U.S.C. §1692a(6), and repeatedly contacted Plaintiff in an attempt to collect a debt.

9. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

FACTUAL ALLEGATIONS

10. At all relevant times, Defendant contacted Plaintiff in its attempts to collect an alleged consumer debt.

11. The alleged debt, an auto loan, at issue arose out of transactions which were for personal, family, or household purposes.

12. Throughout January 2013, Defendant placed repeated telephone calls to Plaintiff's cellular phone in its attempts to collect the subject debt.

13. On average, Defendant contacted Plaintiff once a day.

14. During the parties' initial conversation, and every subsequent conversation, Plaintiff demanded that Defendant stop calling her cellular phone and that it only communicate with her through the mail.

15. Despite Plaintiff's unambiguous demand, Defendant continued to place collection calls to Plaintiff's cellular phone.

1 16. In those instances where Plaintiff spoke with Defendant, Defendant demanded
2 that she verify her date of birth or social security number, which Plaintiff declined to do so,
3 since she had been willing to confirm her name.

4 17. When Plaintiff would not verify her personal information to Defendant,
5 Defendant's collector, Michaela Jackson, exclaimed, "you know why I am calling and you are
6 refusing to cooperate." Further, Ms. Jackson continued to speak to Plaintiff and unnecessarily
7 continued the collection call.

8 18. Further, when Plaintiff was unable to answer Defendant's call, automated
9 voicemail messages were placed on her cellular phone, deceptively claiming that calls were
10 regarding "an important business matter," when in fact the calls was for a personal debt.

12 19. Lastly, upon information and belief, calls placed to Plaintiff's cellular phone
13 from Defendant were computer-generated calls, generated by the use of an automatic telephone
14 dialing system, or used a pre-recorded or artificial voice.

15 20. None of Defendant's telephone calls placed to Plaintiff were for "emergency
16 purposes," as specified in 47 U.S.C. §227(b)(1)(A).

17 21. Plaintiff did not consent to the placement of phone calls to her cellular telephone
18 by Defendant or the entity that placed the account with Defendant for collection.

19 22. Defendant's actions as described herein were taken with the intent to abuse,
20 harass, and annoy in connection with the collection of a debt.
21
22
23
24
25

1
2 **COUNT I**
3 **DEFENDANT VIOLATED § 1692d OF THE**
4 **FAIR DEBT COLLECTION PRACTICES ACT**

5
6 23. Section 1692d of the FDCPA prohibits debt collectors from engaging in any
7 conduct the natural consequence of which is to harass, oppress or abuse any person, in
8 connection with the collection of a debt.

9
10 24. Defendant violated § 1692d of the FDCPA when it called Plaintiff repeatedly and
11 continuously and when it engaged in other harassing or abusive conduct.

12
13 **COUNT II**
14 **DEFENDANT VIOLATED § 1692d(5) OF THE**
15 **FAIR DEBT COLLECTION PRACTICES ACT**

16 25. Section 1692d(5) of the FDCPA prohibits debt collectors from causing a
17 telephone to ring or engaging any person in telephone conversation repeatedly or continuously
18 with the intent to annoy, abuse or harass any person at the called number.

19 26. Defendant violated § 1692d(5) of the FDCPA when it caused Plaintiff's telephone
20 to ring repeatedly and continuously with the intent to harass or annoy Plaintiff.

21
22 **COUNT III**
23 **DEFENDANT VIOLATED §1692f OF THE**
24 **FAIR DEBT COLLECTION PRACTICES ACT**

25 27. A debt collector violates §1692f of the FDCPA by using unfair or unconscionable
26 means to collect or attempt to collect any debt.

27 28. Here, Defendant violated §1692f of the FDCPA engaging in other unfair and
28 unconscionable debt collection practices, including repeatedly contacting after she told them to
29 only communicate with her through mail, demanding that she provide personal information,
30 claiming that she was refusing to cooperate because she would not provide personal information,

and leaving messages describing its purpose as something other than collecting a personal debt.

COUNT III
DEFENDANT VIOLATED THE TELEPHONE CONSUMER PROTECTION ACT

29. Section 227(b)(3)(A) of the TCPA authorizes a private cause of action for a person or entity to bring in an appropriate court of that state “an action based on a violation of this subsection or the regulations prescribed under this subsection to enjoin such violation.”

30. Section 227(b)(3)(B), of the Act authorizes a private cause of action for a person or entity to bring in an appropriate court of that state “an action to recover for actual monetary loss from such a violation, or to receive \$500 in damages for each such violation, whichever is greater.”

31. Despite the fact that Plaintiff never consented to Defendant making calls to her cellular phone, upon information and belief, Defendant placed non-emergency calls to Plaintiff's cellular telephone without Plaintiff's consent.

32. The Act also authorizes the Court, in its discretion, to award up to three (3) times the actual damages sustained for violations.

33. Here, upon information and belief, Defendant regularly placed non-emergency, automated calls to Plaintiff's cellular telephone, using a pre-recorded or artificial voice.

34. Defendant did not have Plaintiff's express consent prior to contacting her on her cellular telephone using an automatic telephone dialing system or pre-recorded or artificial voice.

35. Defendant's conduct violated §227(b)(1)(A)(iii) of the TCPA by making any call using any automatic telephone dialing system or an artificial prerecorded voice to a telephone number assigned to a cellular telephone service.

1 WHEREFORE, Plaintiff, DANIELLE DRAPER, respectfully prays for a judgment as
2 follows:

- 3 a. All actual damages suffered pursuant to 15 U.S.C. § 1692k(a)(1);
4 b. Statutory damages of \$1,000.00 for the violation of the FDCPA pursuant to
5 15 U.S.C. § 1692k(a)(2)(A);
6 c. All reasonable attorneys' fees, witness fees, court costs and other litigation
7 costs incurred by Plaintiff pursuant to 15 U.S.C. § 1693k(a)(3);
8 d. Statutory damages of \$500.00 for each violation of the TCPA, pursuant to 47
9 U.S.C. §227(c)(5)(B); and
10 e. Any other relief deemed appropriate by this Honorable Court.

11

12 **DEMAND FOR JURY TRIAL**

13 PLEASE TAKE NOTICE that Plaintiff, DANIELLE DRAPER, demands a jury trial in
14 this case.

15 DATED: 03/08/13

16 RESPECTFULLY SUBMITTED,

17 KIMMEL & SILVERMAN, P.C.

18 By: _____
CRAIG THOR KIMMEL
19 Attorney ID #57100
Attorney for Plaintiff
20 Kimmel & Silverman, P.C.
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